



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Cecil H. Tate
County Attorney
Bailey County
Muleshoe, Texas

Dear Sir:

Opinion No. 0-2184

Re: May a person serve as Justice of the Peace and as city secretary of the city of Muleshoe at the same time?

We are in receipt of your letter of recent date, requesting the opinion of this department touching the question as stated above.

Article 16, Section 40 of the Constitution of Texas, reads, in part, as follows:

"No person shall hold or exercise, at the same time, more than one civil office of emolument, except that of Justice of the Peace, County Commissioner, Notary Public and * * *

Under the express language of this constitutional provision, a person may hold and exercise the office of Justice of the Peace and at the same time another civil office of emolument. GAAL v. TOWNSEND, 77 Tex. 464, 14 S.W. 355; LUERA v. STATE, 63 S.W. (2d) 699.

Accordingly, it remains only to ascertain if the offices of Justice of the Peace and City Secretary are incompatible within the common law rule, invoked by our courts, that two offices which are incompatible may not be held by the same person.

This department has heretofore held, in our opinion No. 0-582, that a citizen of Anson, Texas, may

Hon. Cecil H. Tate, page 2

held both the offices of Mayor and Justice of the Peace of Precinct No. 1 of Jones County; it has also been held by this department, in our opinion No. 0-2055, that a person who holds the office of Justice of the Peace may also qualify and serve as the recorder of a corporation court.

We can conceive of no basis upon which it may be said that the offices of Justice of the Peace and City Secretary are incompatible. Neither office is accountable to, under the dominion of, or subordinate to the other; neither has any right or power to interfere with the other in the performance of any duty. Offices are incompatible where the duties of each may be inconsistent or conflicting and where the performance of the duties of one office may interfere with the performance of the duties of the other office.

STATE v. MARTIN, 51 SW (2d) 815;
KUGLE v. GLENROSE INDEPENDENT SCHOOL DISTRICT,
50 SW (2d) 375;
THOMAS v. ABERNATHY COUNTY LINE INDEPENDENT
SCHOOL DISTRICT, 290 SW 152;
TEX. JUR., Vol. 34, page 351.

You are, therefore, respectfully advised that it is the opinion of this department that a person who has been elected Justice of the Peace and who has taken the oath of office as such, may also serve as city secretary of the city of Muleshoe, Texas.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Zollie C. Steakley*
Zollie C. Steakley
Assistant

ZCS:ob

APPROVED APR 16, 1940

Grubb Mann
ATTORNEY GENERAL OF TEXAS

